



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 12, 1996

Ms. Susan E. Tennyson
Supervising Attorney
Office of General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR96-0312

Dear Ms. Tennyson:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 38722.

The Texas Department of Health (the "department") received a request for documents "which refer or relate to Global World Media Corporation and/or to any of the following products: Herbal Ecstasy, Nexus, Ritual Spirit and/or Elixir." It is our understanding that an investigation into these products is being conducted by the Office of the Attorney General (the "attorney general"). You state that you have already released to the requestor documents that are not related to the investigation, but that other responsive documents may be withheld from disclosure pursuant to section 552.103(a) of the Government Code.

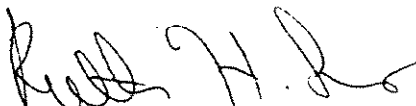
To show that section 552.103(a) is applicable, a governmental body must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. We note that you did not explain to this office whether you are seeking to protect the litigation interests of the department or the attorney general by raising section 552.103(a). However, you have supplied information that shows litigation, to which the department and/or the attorney general would be a party, is reasonably anticipated. It appears that neither the department nor the attorney general wishes the information at

issue to be disclosed, since litigation is anticipated. Also, our review of the documents at issue shows that they are related to the anticipated litigation.¹

Because you have made the requisite showing that litigation is pending or reasonably anticipated and that the requested information relates to that anticipated litigation, you may withhold the requested information under section 552.103(a). However, the applicability of section 552.103 ends if the other party to the anticipated litigation obtains the information or when the anticipated litigation concludes. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 350 (1982) at 3, 349 (1982) at 2.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 38722

Enclosures: Submitted documents

cc: Ms. Sylvia P. Lardiere
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(w/o enclosures)

¹We are unsure as to whether the documents submitted to this office are all of the documents at issue or simply a "representative sample" of the documents at issue. We note, however, that if the documents submitted to this office are a representative sample, we are assuming in this ruling that they are truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Ms. Joyce Weine Iliya
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Consumer Protection Division
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(w/o enclosures)